Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Tribune Media Company	)	
(Transferor)	)	
And	)	**MB Docket No. 17-179**
Sinclair Broadcast Group, Inc.	)	
(Transferee)	)	
	)	
Consolidated Applications for Consent	)	
to Transfer of Control	)	

HERNDON-RESTON INDIVISIBLE CONSOLIDATED REPLY TO OPPOSITIONS TO PETITION TO DENY

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HERNDON-RESTON INDIVISIBLE
REPLY TO CONSOLIDATED OPPOSITIONS TO PETITION TO DENY

Herndon-Reston Indivisible, by its member, hereby respectfully replies to the "Applicants' Second Consolidated Opposition to Petitions to Deny,", filed by Sinclair Broadcast Group, Inc. ("Sinclair") and Tribune Media Company ("Tribune"), and the "Consolidated Opposition", filed by HSH Bellevue (KUNS) Licensee, LLC, HSH St. George (KMYU) Licensee, LLC, and HSH OK City (KAUT) Licensee, LLC, both submitted on July 5, 2018. Not surprisingly, these pleadings regurgitate Sinclair's party line, pounded home in pleading after pleading after rulemaking comments, after on-air "commentaries", after public relations presentations. That party line—that bigness, not competition, is the broadcast industry's only hope; that the public interest is somehow served by monopolization of station ownership; that the proliferation of paid non-broadcast outlets, having no public interest obligations and unavailable to many Americans, vitiates the need for enforcement of the Communications Act's and the FCC's ownership rules against broadcasters, and that Sinclair's bogus "divestitures" to flagrant fronts are beyond FCC scrutiny—is wildly wrongly reasoned. Acceptance by the Commission of this approach will doom local TV in America.

A. The Sky IS Falling

Sinclair and Tribune condescendingly characterize thousands of pages of protests from entities across the ideological spectrum, including conservative news channels, cable associations and niche cable operators, labor unions, state attorney generals, and a national panoply of public interest and grassroots organizations, as well as thousands of individual

Americans, as unfounded "rhetoric". "The sky is not falling", Sinclair patronizes. (At Summary at i.) We respectfully demur.

Sinclair is **already** the largest off-air TV owner in America. As Sinclair has bragged to its investors and revealed to the SEC, its business plan, going forward, contemplates Sinclair as the dominant player in every significant TV market in the U.S., with only one or two competitors, at the most. This nightmare is already playing out in numerous markets where Sinclair has mercilessly exploited "sidecar" deals, including joint sales agreements, station services agreements, studio leases, personnel and managerial sharing, and programming and news arrangements to monopolize local station operations, sales, and news. Should the Commission approve the proposed merger, blessing the control by one licensee of as many as 240 stations serving 72% of the national audience, the agency will have approved the single most expansive merger in the history of local, off-the-air television. Such a tragic mistake will inevitably swing open the door to Pandora's Box for future TV mega-deals. Media leviathans like Fox, Ion, Nexstar, and the networks will inevitably follow in Sinclair's footsteps. The resulting impact on the competitiveness, diversity, and "localness" of television cannot be overstated. Hence, if the Commission proceeds in this fashion, the proverbial sky will truly be falling.

B. Fifty NetFlix's Do Not A Local Television Station Make

Despite repeated bites of the apple, Sinclair and Tribune still have not come to grips with the inherent myth at the core of their broad-sweeping deregulatory argument. They continue to insist that the licensees of free, over-the-air, local television stations, licensed as public trustees of the citizenry's airwaves, and obligated to serve the public interest by the Communications Act, are somehow entirely fungible with non-broadcast, mostly unregulated, operators of cable

systems and programmers, wireless streaming content providers, and the like. Sinclair therefore brashly insists, for example, that no national ownership cap of any kind is warranted in the current media milieu. This fantastical notion of limitless competition, particularly when manipulated to attempt to undermine the Commission's authority to regulate broadcasters, stands self-serving illogic on its head.

Nor does Sinclair's Consolidated Response make any effort to explain away the data and studies furnished in this docket by HRI and other Petitioners to the effect that millions of Americans DO NOT have access to the Internet and/or cable, or do not choose to secure such access, because of the prohibitive cost or complexities of such technologies. What about these often unserved or underserved television viewers, including many minorities, the elderly, the impoverished, and rural residents? Have they forfeited their statutory rights to diverse, local or other voices competing with Sinclair and media outlets not subject to "must run" edicts from Baltimore by not opting for paid programming? Of course not.

C. Sinclair's Relentless Protests that Its Sidecar Deals Are Authentic Divestitures Are Belied By Its Track Record, the Terms of the Deals, the Absurdly Low Prices to Be Paid in Ostensibly Arms Length Transactions, and the Cozy Relationships Sinclair Has and Has Had for Decades with the Sidecars.

In its Petition, HRI discussed in detail Sinclair's decades-long history of deceptive, malicious gameplaying to circumvent the ownership limits in the Act and the Rules, culminating in substantial fines and consent decrees, accompanied by warnings not to repeat the transgressions. HRI also analyzed each of the instant problematic web of agreements with the divested property buyers, pointing out in detail the red flags they raise. Finally, HRI fleshed out

the startling (or perhaps not so startling) business and personal relationships among the Smith family and the divestiture beneficiaries.

Sinclair's and HSH's responses to these arguments essentially ignore them or insist that the Commission has allowed such gamesmanship in the past and therefore need not scrutinize the sidecar agreements here. Incredibly, Sinclair asserts:

> "In sum, Petitioners' opposition to the proposed divestitures is rooted in their dissatisfaction with the Commission's current ownership rules and attribution standards, **rather than in any specific deal terms.**" (Sinclair Opposition at 11.)

This is demonstrably untrue. HRI attacked a near 50-year option at basically the same price for which the Optionee initially sold the station. It also questioned the non-reciprocal option assignment rights and the absurdly low option price of $10,000 that Sinclair paid. It questioned the purchase prices in the divestiture and related agreements.[1] And, it took issue with Sinclair's right to object to preemption of programming by Cunningham, Armstrong Williams, and Steven Fader in Chicago on "reasonableness" grounds and Sinclair's right of specific performance under these agreements. Petitioner asserted that these provisions open a gaping hole in the mandatory licensee absolute preemptive authority over programming demanded by the FCC. Did Sinclair read any of this or did it just decide that it had no answer and therefore punting was the game plan?

Sinclair further urges that "… sharing agreements were promulgated to afford certainty and predictability to applicants structuring transactions.…" (Sinclair Opposition at 9.) HRI certainly agrees that locking up a front with a $10,000, near 50-year option, requiring the front to

[1] Sinclair urges that Petitioners have not substantiated that the prices are outrageous giveaways (at n. 33), but $60 million dollars for a network affiliate (WGN and its network and affiliated radio station) in the nation's third largest market is preposterous on its face. So is the price Michael Anderson paid for the Smiths' voting stock in Cunningham--$400,000!!!

pay Sinclair large sums for shared services and sales "consulting", and granting broad, essentially uncontrolled programming rights to Sinclair does "afford certainty and predictability" to the latter. But, at what cost to the public interest in competition and licensee independence?

HSH's Consolidated Opposition likewise assiduously avoids the specific issues HRI raised about the terms of Williams' sweetheart deal with his longtime patron, Sinclair. Instead, it offers platitudes about how Williams' loyal service as a Sinclair-financed front, allowing Sinclair to bring its ownership interests within a Commission cap, will serve the goal of diversity. (At 6-7.) HSH does not address how it came to pass that Sinclair elected to turn again to an old friend, as it has in the past, to circumvent the FCC's rules. HSH recites Williams' impressive resume. (At 3.) But, Williams neglects to mention how he and Sinclair and another licensee came to hoodwink the American (including Sinclair's) viewing audience into believing that Williams was an impartial commentator on educational issues in 2003, when he was in fact a contractor paid by the U.S. government to espouse a pro-government party line on the air, in the press, and elsewhere.

Perhaps, most importantly, neither Sinclair nor HSH even mentions the critical FCC decision in *Edwin L. Edwards, Sr.*, FCC 01-336 (2001). They insist that there is no authority or basis for what they claim are Petitioners' "unfounded assumptions" and "speculation, exaggeration, and outright misstatement" (Summary at ii). Yet, the allegations against Sinclair and Cunningham's predecessor, Glencairn, in that matter were eerily similar to those HRI and other Petitioners level here. An absurdly low purchase price, a pre-existing employment relationship, an incredibly ignorant, unsophisticated front principal, an option on bargain terms, and a powerful media conglomerate soon to grow into the nation's largest broadcaster—all present in *Edwards*—are present in these divestiture applications. The result in that case was a

substantial fine based on a finding of unauthorized transfer of control against both Sinclair and the front, together with conditions on future operations and a warning not to repeat the misconduct. Here, the stakes are much, much larger. At the very least, the Commission should adopt the sanction advocated in Commissioner Copps' Dissenting Statement—designation for hearing to determine what degree of influence Sinclair will have in the operations and policies of its sidecars on a real time basis.

D. Conclusion

Sinclair and its fronts have arguably been afforded more opportunities and more leeway to demonstrate that the proposed divestitures and proposed merger are in the public interest than any other applicant in the FCC's history. But the sum total of their amendments, exhibits, and arguments have failed to meet that burden. This merger must therefore, as a matter of law and policy, fail. Approval of the applications must be denied or designated for hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Howard M. Weiss, do hereby certify that, on this 12th day of July, 2018, I sent by e-mail copies of the foregoing " HERNDON-RESTON INDIVISIBLE REPLY TO CONSOLIDATED OPPOSITIONS TO PETITION TO DENY" to:

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